

FILED
237 PM
SEP 16 2019

NO. 19-CV-2053-CV

KEVIN SKONNORD, ET AL.,

Plaintiffs,

vs.

GUADALUPE-BLANCO RIVER
AUTHORITY,

Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

LINDA BALK
Clerk, Dist. Court, Guadalupe Co. Tx.
By: [Signature] Deputy

GUADALUPE COUNTY, TEXAS

25TH JUDICIAL DISTRICT

NO. 19-2054-CV

JIMMY AND CHERYL WILLIAMS,
ET AL.,

Plaintiffs,

vs.

GUADALUPE-BLANCO RIVER
AUTHORITY AND ITS OFFICERS
AND DIRECTORS

Defendants.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

GUADALUPE COUNTY, TEXAS

25TH JUDICIAL DISTRICT

AGREED TEMPORARY INJUNCTION

Before the Court are (i) the Applications for Temporary Injunction filed on September 5, 2019 by Plaintiffs in both captioned causes of action (collectively "Plaintiffs"), requesting an order enjoining Defendants, GUADALUPE-BLANCO RIVER AUTHORITY ("GBRA"), and Kevin Patteson, Jonathan Stinson, Dennis L. Patillo, Don Meador, Kenneth A. Motl, Rusty Brockman, William Carbonara, Steve Ehrig, Oscar Fogle, Ronald J. Hermes, Tommy Matthews, II, (collectively, "Defendants"), during the pendency of a full trial on the merits of this case, from drawing down the lakes known as Lake Placid, Lake McQueeney, Lake Gonzales and Meadow Lake, which are part of the Guadalupe River basin and within the jurisdiction of the GBRA.

On September 11, 2019, the Court conducted an evidentiary hearing on Plaintiffs' Applications for Temporary Injunction and entered a Temporary Restraining Order until the completion of the Temporary Injunction Hearing. All parties received notice of the hearing and appeared through counsel. Based on the pleadings, evidence presented and admitted at this hearing, and the arguments of counsel, the Court finds that (i) Plaintiffs have pleaded and proved (i) a cause of action against the GBRA; (ii) a probable right to the relief sought by Plaintiffs; and (iii) that Plaintiffs will suffer probable, imminent, and irreparable injury if a temporary injunction does not issue to maintain the status quo pending a full trial on the merits of this case. Accordingly, the Court finds that Plaintiffs' Application for Temporary Injunction should be, in all things, GRANTED. The parties have agreed that Defendant's Plea to the Jurisdiction shall be set for re-hearing and ruling by the Court on a later date no earlier than seventy-five (75) days before the trial date set by this Order, with proper notice.

The Court specifically FINDS and CONCLUDES as follows:

1. The Court FINDS that the Plaintiffs and the GBRA present circumstances that require a careful balancing of interests. The Plaintiffs claim imminent harm and irreparable injury that would result from the immediate dewatering of the subject lakes. The Defendants present a concern over the integrity of a dam system that Defendants claim is at the end of its useful life and, therefore, presents a threat of imminent and irreparable harm. The Court finds that injunctive relief is necessary in order to maintain the status quo and balance the interest of the parties. The parties have themselves reached an agreement that the Court FINDS is reasonable and in the interest of all parties. The Court therefore makes the following findings and rulings based in substantial part on the agreements of the parties. The parties' agreements and the Court's findings are effective for purposes of this Order only and may not be used against a party at any subsequent proceeding.

2. The GBRA is a conservation and reclamation district, governmental agency, and political subdivision of the State of Texas created by special act of the Texas Legislature in 1933 as the Guadalupe River Authority under Article XVI, Section 59, of the Texas Constitution and reauthorized by special act of the Texas Legislature as the Guadalupe-Blanco River Authority and codified in Article 8280-106 V.T.C.S.

3. Plaintiffs own real and personal property located on the waterfront of the Guadalupe Valley Lakes, which such lakes are part of the Guadalupe River basin and within the jurisdiction of the GBRA (collectively, "Plaintiffs' Property").

4. Plaintiffs have alleged the following causes of action against the GBRA relating to the GBRA's intentional, knowing and affirmative decision to commence a systematic drawdown of the Guadalupe Valley Lakes commencing on September 16, 2019:

- a. Inverse condemnation and unconstitutional taking of Plaintiffs' real and personal property in violation of Article I, Section 17 of the Texas Constitution;
- b. Statutory taking under Section 2007 of the Texas Government Code; and
- c. A request for declaratory judgment that GBRA's failure to perform a takings impact assessment in violation of Section 2007.043 of the Texas Government Code invalidates the GBRA's action to drawdown the Guadalupe Valley Lakes; and
- d. Plaintiffs in Cause No. 19-2054-CV's *ultra vires* claims against the individual Defendants for injunction relief as a result of the Defendants' failure to perform ministerial acts as required by Texas law, specifically, Art. 8280-106, Vernon Civ. Stat., as amended by S.B. 626, effective September 1, 2019, and § 299.41, Tex. Adm. Code and the individual Defendants' actions undertaken without legal authority. See *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154 (Tex. 2016).

5. Plaintiffs in both causes of action have demonstrated a probable right to the relief sought by offering competent evidence supporting their causes of action against the Defendants pursuant to Chapter 2007, §§ 2007.002, *et seq.*, Tex. Gov't Code and pursuant to the Constitution

of the State of Texas, and for *ultra vires* acts, for the unlawful “taking” of the Plaintiffs’ waterfront, improved real estate appurtenant to the Guadalupe River and all tributaries and back-waters thereof located in Comal, Guadalupe and Gonzales Counties, Texas on the Guadalupe Valley Lakes, which include Lakes Dunlap, McQueeney, Placid, Meadow, Gonzales and Wood (referred to herein as the “GV Lakes” or the “Guadalupe Valley Lakes”) based upon the unreasonable interferences by the Defendants with those property owners’ rights to use and enjoy their properties and by further restricting or limiting their rights to their properties.

6. The decision by the GBRA to drawdown the Guadalupe Valley Lakes is an intentional governmental action undertaken for a public use or benefit.

7. The GBRA has not prepared a written takings impact assessment in accordance with Texas Government Code Section 2007.0043.

8. Plaintiffs have alleged, and for the purposes of this Order Defendants concede, that there are reasonable alternatives to drawing down the Guadalupe Valley Lakes that are available to the GBRA to protect public safety.

9. Plaintiffs have alleged, and for purposes of this Order Defendants concede, that a potential loss of rights in Plaintiffs’ real property with respect to the diminution in market value of Plaintiffs’ Property that will occur from GBRA’s systematic drawdown of the Guadalupe Valley Lakes, which such potential loss in Plaintiffs’ real property is a probable, imminent, and irreparable injury that qualifies a party for a temporary injunction. *Rus-Ann Dev., Inc. v. ECGC, Inc.*, 222 S.W.3d 921, 927 (Tex. App.—Tyler 2007, no pet.) (“In Texas, the potential loss of rights in real property is a probable, imminent, and irreparable injury that qualifies a party for a temporary injunction.”).

10. The Court has considered Defendants' contention , that immediate action is necessary to assess and address Defendant's claim of potential imminent harm of a spill gate failure at one or more of the Guadalupe Valley Lakes, including possible loss of life, damage to property, and exposure to claims as a result of loss of life or damage to property.

11. The Court has considered Defendants' contention that there exists a potential threat of imminent and irreparable harm to property and public safety if the spill gates at Lakes McQueeney, Placid, Meadow and Gonzales were to fail.

12. The GBRA has not offered to compensate Plaintiffs monetarily for damages to Plaintiffs' Property that may result from the GBRA's drawdown of the Guadalupe Valley Lakes. A temporary injunction against the enforcement and implementation of the drawdown, in combination with a mechanism to assess and manage Defendants' claim of risk of harm from a potential dam failure, will preserve the status quo and will not impose an undue burden on Plaintiffs or the Defendants.

INJUNCTIVE RELIEF

IT IS FURTHER **ORDERED, ADJUDGED AND DECREED** that, during the pendency of a full trial on the merits of this case:

- a. Defendants and their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, are hereby **ENJOINED** from dewatering, drawing down, or draining Lake Placid, Lake McQueeney, Lake Gonzales and Meadow Lake, except as otherwise permitted by this Order and that the water levels of the lakes shall remain the same as they were on September 11, 2019, under normal operating conditions, except as otherwise permitted by this Order;
- b. Subject to subparagraph (l) below, all activity and recreation on Lake Placid, Lake McQueeney, Lake Gonzales and Meadow Lake shall, effective as of 12:00 a.m. on September 19, 2019, cease, including but not limited to, boating, skiing, fishing from watercraft, swimming, kayaking, tubing, canoeing or wading, which shall include all activity and recreation on the Guadalupe River from Dunlap dam through Farm to Market Road 1117 (F.M. 1117) and from State Highway 80 (SH

80) through Gonzales County Road 143 (C.R. 143); *provided, however, notwithstanding the foregoing*, nothing herein shall be deemed or construed as prohibiting activities contemplated by this Order;

- c. All parties to this suit shall reasonably cooperate with each other, and with state and local governing bodies, to enact such ordinances, laws or other regulations as are reasonably necessary to enforce this Order;
- d. The Court orders that all parties to this suit shall reasonably cooperate, to the extent lawful, with each other and with law enforcement personnel to patrol the Guadalupe Valley Lakes to ensure that the prohibitions of this Order are enforced. Such cooperation shall include the hiring of additional persons qualified to patrol the Guadalupe Valley Lakes and eject, cite, or arrest persons violating the prohibitions of this Order.
- e. Within 3 (three) days of the signing of this Order, Defendants, at Defendants' expense, shall designate an outside independent expert (the "GBRA Designated Expert") qualified to render an unbiased opinion on the safety of the Guadalupe Valley Lakes, given the current condition of the hydroelectric dams;
- f. Within 3 days of the signing of this order, all Plaintiffs, at Plaintiffs' expense, shall collectively designate one (1) independent expert (the "Plaintiff Designated Expert"), qualified to render an unbiased opinion on the safety of the Guadalupe Valley Lakes, given the current condition of the hydroelectric dams;
- g. The GBRA Designated Expert and the Plaintiff Designated Expert shall agree on a third independent expert (the "Third Designated Expert") qualified to render an unbiased opinion on the safety of the Guadalupe Valley Lakes, given the current condition of the hydroelectric dams;
- h. The GBRA is ordered to fully cooperate with the GBRA Designated Expert, the Plaintiff Designated Expert and the Third Designated Expert (collectively, the "Independent Expert Panel") by providing any and all available information, including, without limitation, third party consultant and expert data provided to and/or relied upon by Plaintiffs and/or the GBRA;
- i. Plaintiffs in Cause No. 19-2053-CV shall be solely responsible for the payment of all costs for the Plaintiff Designated Expert and Defendant shall be solely responsible for all costs for the GBRA Designated Expert. All costs of the Third Designated Expert shall be paid one-half (1/2) by the GBRA and one-half (1/2) by Plaintiffs in Cause No. 19-2053-CV;
- j. As soon as reasonably practicable, but in no event later than thirty (30) days from the date of this Order, (the "Initial Determination Period"), the Independent Expert Panel shall provide a report to the Court and all of the parties to this suit, which such report shall include the Independent Expert Panel's determination of

designated “unsafe zones,” if any, not suitable for activity or recreation on the Guadalupe Valley Lakes; *provided, however,* if the Independent Expert Panel determines that it cannot make such determination within such 30-day period, then the Independent Expert Panel shall, prior to the expiration of such-30 day period, notify the Court and the parties accordingly (which such notice shall include detailed explanation of the reasons for such extension) and the Initial Determination Period shall be extended for up to an additional thirty (30) days.

- k. If and when “unsafe zones” are identified by the Independent Expert Panel, the parties to this suit shall use those safety measures prescribed by Independent Expert Panel regarding appropriate warnings and this Order shall be deemed amended to provide that access, activity and recreation, including but not limited to, boating, skiing, fishing from watercraft, swimming, kayaking, tubing, canoeing or wading, shall be prohibited in such designated “unsafe zones” on the Guadalupe Valley Lakes;
- l. If and when “unsafe zones” on the Guadalupe Valley Lakes are identified by the Independent Expert Panel in accordance with sub-paragraph (j), all other areas on the Guadalupe Valley Lakes shall reopen and the prohibitions set forth in paragraph (b), above, shall immediately and automatically terminate in all respects regarding all areas of the Guadalupe Valley Lakes other than designated “unsafe” zones.” All designated “unsafe zones” shall remain closed and subject to the prohibitions set forth in subparagraph (b), above.
- m. The Independent Expert Panel shall consider the circumstances, if any, under which property owners may access the “unsafe zones” and shall devise a procedure through which property owners may apply to the GBRA for such access, such decision being made in accordance with the time period provided in subparagraph (j).
- n. Notwithstanding anything herein to the contrary, the GBRA is not prohibited herein from lowering the spill gates on the Guadalupe Valley Lakes as part of its reasonable ordinary course of operations (including without limitation, allowing water to pass downstream in response to, or in anticipation of increased flow in the river, for debris removal, for necessary maintenance on generators, or for other reasonable and necessary periodic operations);
- o. Notwithstanding anything herein to the contrary, the GBRA is not prohibited from lowering the spill gates in the event of a flood event, permanent spill gate failure, or other bona fide emergency;
- p. Nothing in this Order is intended to nor shall it affect any statutory and/or regulatory obligations that the GBRA has with regard to the operations, maintenance, and/or replacement of the Guadalupe Valley Lakes, and that any such obligations remain completely intact.; and

- q. Any party to this suit may apply to the Court at any time for relief from, or modification to this Order, as such party may deem necessary.

BOND

The Court finds that Texas Rule of Civil Procedure 684 is applicable to this temporary injunction because Defendant is a subdivision of the State of Texas, has no pecuniary interest in the suit and has shown no monetary damages. Defendant is unlikely to suffer any injury or damage as a result of this temporary injunction. IT IS, THEREFORE, ORDERED that Plaintiffs' payment of the cash in lieu of a bond posted on September 11 2019, and filed with the Clerk of the Court in the total amount of One Hundred and No/100 Dollars (\$100.00) is and shall continue to be adequate and sufficient to to secure this temporary injunction. The Clerk shall forthwith issue a temporary injunction in conformity with this Order.

TRIAL SETTING

IT IS ORDERED, that a full trial on the merits of this cause is hereby set on Oct. 5, 2020 at 9:00 o'clock A.m in the above referenced Court.

SIGNED this 16th day of Spt. 2019 at 2:35 o'clock P.m.



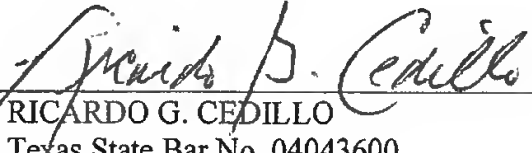
HONORABLE STEPHEN B. ABLES
JUDGE PRESIDING

AGREED AS TO FORM AND SUBSTANCE:

dc&m | Davis, Cedillo & Mendoza, INC.
ATTORNEYS AT LAW

McCombs Plaza, Suite 500
755 E. Mulberry Avenue
San Antonio, Texas 78212
Telephone No.: (210) 822-6666
Telecopier No.: (210) 822-1151

By:


RICARDO G. CEDILLO

Texas State Bar No. 04043600
rcedillo@lawdcm.com

LESLIE J. STREIBER, III.
Texas State Bar No. 19398000
lstriber@lawdcm.com

BRIAN L. LEWIS
Texas State Bar No. 24060166
blewis@lawdcm.com

BRANDY C. PEERY
Texas State Bar No. 24057666
bpeery@lawdcm.com

ATTORNEYS FOR SKONNORD, et al., PLAINTIFFS

KELLY, SUTTER & KENDRICK, P.C.

3050 Post Oak Blvd., Suite 200

Houston, Texas 77056

Telephone No.: (713) 595-6000

Telecopier No.: (713) 595-6001

By:



J. DOUGLAS SUTTER

Texas State Bar No. 19525500

dsutter@ksklawyers.com

and

LAW OFFICES OF JAMIE GRAHAM & ASSOCIATES, PLLC

301 South St. Mary's St., Suite 2500

San Antonio, Texas 78205

Telephone: (210) 308-6448

Facsimile: (210) 308-5669

Jamie L. Graham

State Bar No. 24027335

jamie@jamiegrahamlaw.com



ATTORNEYS FOR WILLIAMS, et al., PLAINTIFFS

AGREED AS TO FORM AND SUBSTANCE:

By: 

LAMONT A. JEFFERSON
State Bar No. 10607800
ljefferson@jeffersoncano.com

EMMA CANO
State Bar No. 24036321
ecano@jeffersoncano.com
JEFFERSON CANO
112 E. Pecan St., Suite 1650
San Antonio, Texas 78205
and

AMY WARR
State Bar No. 00795708
awarr@adjtlaw.com
ALEXANDER DUBOSE & JEFFERSON LLP
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562

ATTORNEYS FOR DEFENDANTS

AGREED AS TO FORM AND SUBSTANCE:

By: 

BLAKE W. STRIBLING
State Bar No. 24070691
bstribling@chasnoffstribling.com
MATTHEW E. PEPPING
State Bar No. 24065894
mpepping@chasnoffstribling.com
ADAM KIEHNE

State Bar No. 23054926
akiehne@chasnoffstribling.com
CHASNOFF MUNGIA VALKENAAR PEPPING & STRIBLING, LLP
1020 N.E. Loop 410, Suite 150
San Antonio, Texas 78209
Telephone: 210-469-4155
Facsimile: 210-855-9898

ATTORNEYS FOR BRUINGTON INTERVENORS